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February 24, 2006

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Attn: Wireline Competition Bureau

**Re: Smith Bagley, Inc.
Petition for Designation as an Eligible Telecommunications
Carrier for the Navajo Reservation in Utah
CC Docket No. 96-45**

Dear Madam Secretary:

Smith Bagley, Inc. ("SBI"), by counsel, supplements the above-captioned petition for ETC status on Navajo reservation lands in Utah ("Petition"). SBI provides this supplement in response to a request from the Commission for additional information and documentation in support of its Petition.

Population Density on Private Lands.

On January 6, 2005, SBI provided a map depicting very small areas of private lands located within the Navajo Trust Lands in Utah. We have been requested to provide information concerning population density on such private

lands within that area. The 2000 Tribal Census for Navajo land in Utah counts 28 households, comprising 109 people living on private or non-trust lands. The population density is set forth below:

Types of Lands in Utah	Square Miles	Population	Density/ Sq. Mi.
Navajo Nation Trust	1,911.79	6,373	3.33
Navajo Nation Fee	0.66	0	0
Individual Indian Allotment	15.22	109	7.16
Government E.O. PLO & School Tract	0.009	0	0
State of Utah	84,900.00	2,389,039	28.14

Source: Tribal Lands Dept., Div. of Natural Resources

In sum, the private or non-trust lands, which total less than 16 square miles, comprise only eight-tenths of one percent (0.8%) of the land area designated as Navajo Nation Trust lands (over 1900 square miles). The population density, roughly 7 persons per square mile, is more dense than that of Trust lands, yet very rural by any measure.

Taxes on Navajo Lands in Utah.

While there are several small areas in Utah where SBI's wireless signal provides coverage from cell sites located in Arizona, the company currently has no customers in Utah. Moreover, the company does not have any stores in Utah selling prepaid phone cards. Accordingly, at this time, the company pays taxes to the Navajo Nation for customers in Arizona and New Mexico. If the company gets customers in Utah, it will pay taxes to the Navajo Nation, as it does today for customers in Arizona and New Mexico.

All Residents of Navajo Tribal Lands are Subject to Navajo Law.

As a result of an 1868 treaty with the Navajo Nation, the Supreme Court ruled that the tribe has the authority to regulate its tribal members and exercise civil and criminal jurisdiction free from state interference, stating, "the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed."¹

¹ *Williams v. Lee*, 358 U.S. 217, 221-2, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959); *see also, Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 18, 107 S.Ct. 971, 977 (1987) (Civil jurisdiction over non-Indians on reservation lands "presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute."); *Enlow v. Moore*, 134 F.3d 993, 996 (10th Cir. 1998) ("In civil disputes involving a non-Indian and Indian land, where no treaty provision or federal statute divests the tribal court of jurisdiction, the tribal court may properly exercise jurisdiction").

The Supreme court has also confirmed a tribe's proper exercise of civil jurisdiction over both tribal and non-tribal members, stating:

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations....A tribe may regulate, through taxation, licensing or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements.²

Also significant in the present case, Indian nations have the inherent power to tax using their general governmental authority, except to the extent that Congress has expressly limited that power, and that governmental authority includes taxation of non-Indians who are present within Indian country.³ SBI remits various taxes and fees to the Navajo Nation in connection with its operations.

We think it clear that all residents are subject to Navajo law.

The State of Utah Does Not Regulate Cellular or PCS Carriers.

The Utah Code specifies various regulations applicable to "telephone corporations." Utah Code Section 54-2.1(23)(b) provides: "'Telephone corporation' does not mean a corporation, partnership, or firm providing: (i) intrastate telephone service offered by a provider of cellular, personal communications systems [sic] (PCS), or other commercial mobile radio service as defined in 47 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications Commission. . ."

The Status of Telecommunications Competition in Utah, Seventh Annual Report to the Governor, Legislature, and the Public Utilities and Technology Interim Committee (October 2004) at p. 6: "The Utah Public Service Commission does not regulate wireless providers."

Utah Public Service Commission web site, Frequently Asked Questions (www.psc.state.ut.us/faq.htm):

"Q: Does the Public Service Commission regulate wireless or cellular telephone companies?

A: No, the Federal Communications Commission (FCC) regulates wireless or cellular phone companies. The FCC can be reached toll free at 1- (888) 225-5322 or the non-toll free number is 1-202-418-1310."

3 Montana v. U.S., 450 U.S. 544, 565, 101 S.Ct. 1245, 1258 (1981); See also, Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 18 107 S.Ct. 971, 977-78 (1987) ("Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty....Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute....").

3 In the Matter of Atkinson Trading Co. Inc., Navajo Nation Supreme Court, 24 ILR 6191 (1997); see also, Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134, 153, 100 S.Ct. 2069, 2081 (1980) ("Federal courts have acknowledged tribal power to tax non-Indians entering the reservation to engage in economic activity."), citing, 153 Buster v. Wright, 135 F. 947, 950 (8th Cir. 1905), appeal dismissed, 203 U.S. 599, 27 S.Ct. 777 (1906); Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (8th Cir. 1956).

Composition of Residents on Navajo Lands.

Information available from the U.S. Census Bureau indicates that roughly 96% of all residents on Navajo Tribal lands in Utah are Navajo. SBI has been unable to develop any supplemental information to understand whether the remaining persons are non-Navajo Native Americans or tribal members, however SBI believes that they are not.

List of Substantive Submissions

As requested, we have attached hereto as Exhibit B a list of submissions that SBI has made in this proceeding.

We trust that this has been responsive to your request. Should you have questions or require further information, please contact undersigned counsel directly.

Sincerely,



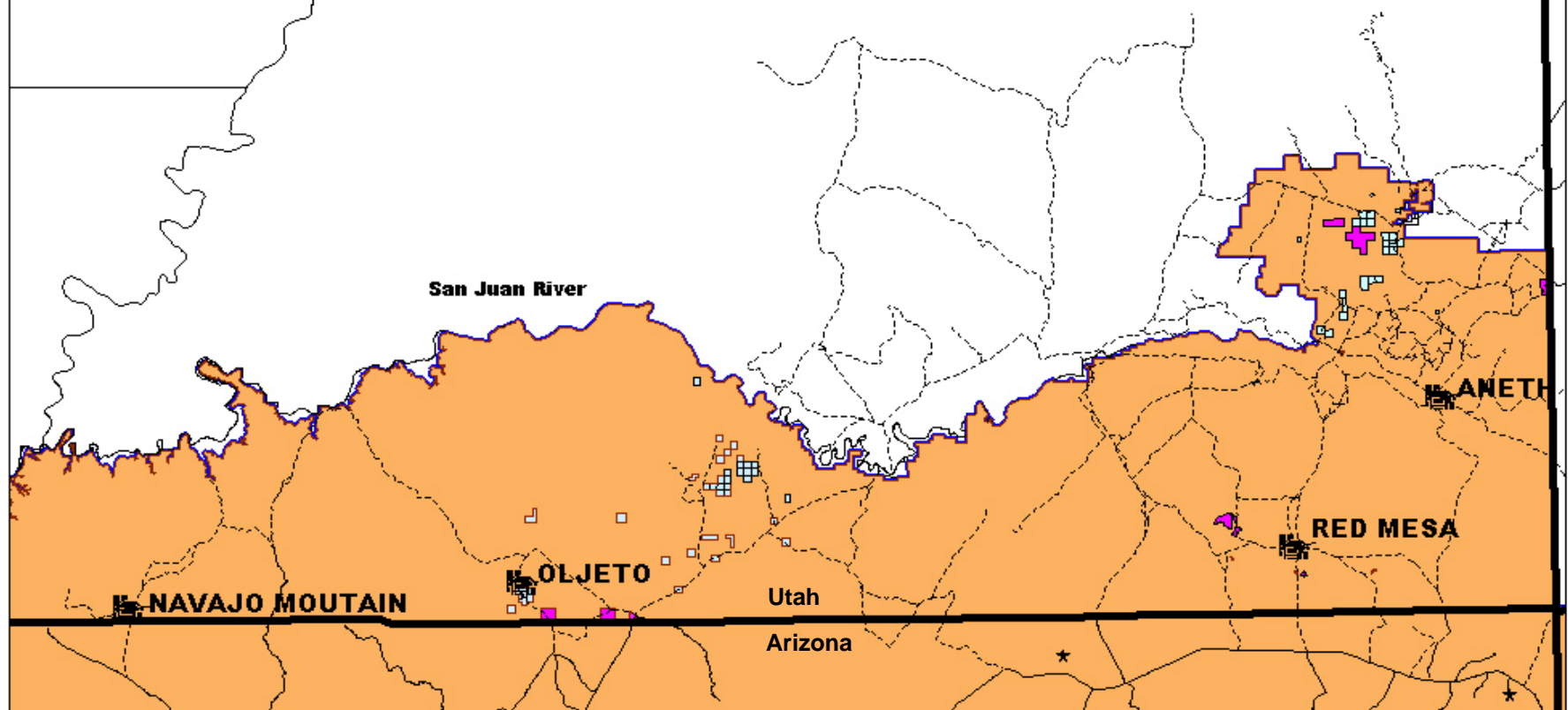
David LaFuria
Counsel for Smith Bagley, Inc.

cc: Dana Shaffer, Esq.
Mark Seifert, Esq.
Carol Pomponio, Esq.

Map of Navajo Trust Lands and Non-Tribal Areas in Utah

Utah – Navajo Lands

- Reservation Trust Land
- Indian Allotment Land
- Private Land



**Smith Bagley, Inc., Petition for Designation as an ETC
for the Navajo Reservation in Utah**

List of Substantive Submissions

2002

5/24/02 Petition for ETC Designation

8/21/02 Comments of Independent Telephone and Telecomm. Alliance

9/15/02 Reply Comments of SBI

2003

5/13/03 Letter to Commissioner Copps requesting expedited treatment

7/15/03 Letter in response to inquiry re: Navajo Nation jurisdiction over wireless

2004

3/30/04 Letter from Navajo President urging prompt FCC action on SBI Petition

5/14/04 Supplement to Petition in response to invitation to refresh record

 Letter accompanying copy of Navajo Utah Commission Resolution supporting SBI Petition

6/3/04 Letter from Navajo Nation confirming its endorsement of SBI Petition (filed via ECFS 6/4/04)

9/27/04 Letter from Navajo Nation re: jurisdiction over wireless carriers (filed via ECFS 10/12/04)

11/28/04 Letter from R. Watkins confirming SBI consent to NNTRC jurisdiction

2005

1/6/05 Letter in response to request for additional information/documentation on tribal sovereignty, consent to Navajo jurisdiction, status of Navajo lands